The total award of $209,861 is more than 40% in excess of the judge's award of $146,917.

Their Lordships will allow this appeal. Judgment should be entered for the appellant for $178,382. The respondent must pay the Appellant's costs of the appeal to the Court of Appeal and before this Board.

Appeal allowed.

Solicitors: *Kingsford Dorman; Herbert Oppenheimer Nathan & Vandyk.*

SINGAPORE REPORTS

IN THE MATTER OF AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Sinnathuray & Chua JJ.) January 31, 1984]
[Singapore – Originating Summons No. 456 of 1982]

Legal Profession – Advocate and solicitor convicted of criminal offences – Defect of character making him unfit for his profession – Disciplinary proceedings – Plea of autrefois convict or res judicata rejected – Two years' suspension from practice – Legal Profession Act (Cap. 217), s. 84(1) & 84(2)(a) & (b) – Penal Code (Cap. 103), s. 213.

In the present disciplinary proceedings the complaint was that the respondent had been convicted of criminal offences (see [1981] 2 M.L.J. 215 and [1982] 2 M.L.J. 293) implying a defect of character which made him unfit for his profession. The respondent submitted that he was entitled to have the show cause order discharged on the grounds:

(1) of *autrefois* convict; or

(2) of a doctrine of estoppel, namely issue estoppel, or *res judicata* in its wider sense and

(3) of the court's inherent jurisdiction to stay proceedings on the ground that they were oppressive and an abuse of its process.

Held: (1) in the present case, on the assumption that the doctrine of *autrefois* is available in disciplinary proceedings against an advocate and solicitor, the respondent's plea of *autrefois convict* must fail. One essential ingredient which is necessary to prove in the present proceedings is the respondent's conviction of one or more criminal offences. This ingredient is unnecessary to support a complaint in the first disciplinary proceedings and it follows that the respondent has not been put to peril of disciplinary punishment for the same complaint or "offence" as that which he is charged;

(2) on the facts before the court, the plea of issue estoppel, even if the plea is available in the present disciplinary proceedings, has not been successfully made out by the respondent. It was plain on the facts, which show that the respondent was determined to exhaust all possible avenues in relation to these criminal convictions, that it would be against the interest of the public for the Law Society to withhold applying to the High Court for a show cause order on the delay charge until the Disciplinary Committee which had only recently been appointed had heard the convictions charge and had reported its findings;

(3) the delay charge and the convictions charge although both arise from substantially the same facts have different legal characteristics and the failure to hear together the two show cause orders, one made on January 13, 1981 and the other on September 17, 1982, did not amount to oppression and injustice to the respondent;

(4) on the facts and having regard to all the circumstances and the nature of the offence, the respondent's conviction clearly implies a defect of character which makes him unfit for the profession;

(5) it would not be in the public interest or in the interest of the profession, on all the facts and the circumstances of the present case that no penalty is imposed. The respondent should therefore be suspended from practice for a period of two years and that he be ordered to pay the costs of the proceedings.

Cases referred to:

(1) *Connelly* v. *Director of Public Prosecutions* [1964] A.C. 1254, 1307-1310, 1339.
(2) *Yat Tung Investment Co. Ltd.* v. *Dao Heng Bank Ltd. & Anor.* [1975] A.C. 581.
(3) *Director of Public Prosecutions* v. *Humphrys* [1977] A.C. 1.

ORIGINATING SUMMONS.

Ross-Munro Q.C. (*C.S. Wu* with him) for the respondent.

J. Grimberg for the Law Society.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): The Respondent, Harry Wee, was admitted as an advocate and solicitor of the Supreme Court in 1948. He was the President of the Law Society for three successive years from 1975 to December 1977 and during this period and for many years previously he practised under the name of Braddell Brothers of which he is the sole proprietor.

In February 1976 he discovered that S. Santhiran, a legal assistant, in his firm who had been in his employment since 1971 had misappropriated monies from the firm's Clients' Account and on March 8, 1976 he knew that the misappropriations exceeded $200,000/-. He confronted Santhiran who admitted the amount was $298,270.75. After Santhiran's admission he did not report to the Police and did not inform the Council of the Law Society Santhiran's misdeeds but continued to employ Santhiran as a legal assistant of his firm and to allow Santhiran to appear in court and to handle new matters. The respondent, through an intermediary, also made an offer to Santhiran that if he made total restitution of the misappropriated monies, the respondent would not report the matter to the Police. By June 1976 he had obtained almost total restitution from Santhiran but he kept Santhiran in his employment until December 1976 when Santhiran left and set up a practice of his own. The respondent came to know of this in January 1977.

It was only on April 30, 1977 in a private and confidential letter to the Law Society marked for the attention of the then Vice-President of the Law Society that the respondent disclosed that Santhiran had misappropriated Braddell Brothers clients' monies and that he would shortly be presenting a complaint against Santhiran for action to be taken by the Law Society. On May 26, 1977 he reported Santhiran's misappropriations to the police and on May 27, he made a formal complaint against Santhiran to the Law Society. Throughout the relevant period he continued to hold office as President of the Law Society which office he vacated on December 31, 1977 and throughout the period as President of the Law Society he presided as Chairman of the Council of the Law Society at all meetings of the Council (see Section 58(2) of the Legal Profession Act). No action appeared to have been taken by the Council on the respondent's complaint against Santhiran to the Law Society while he was President of the Law Society.

In March 1978 the new President, who was also the Chairman of the Inquiry Committee appointed by the Council of the Law Society, wrote to the respondent to inform him that the Inquiry Committee had decided of its own motion to enquire into his conduct in delaying reporting Santhiran's admitted defalcations to the Law Society and his offer to Santhiran that he would not report to the police Santhiran's misappropriations as long as Santhiran admitted having committed them and made full restitution.

The respondent gave a written explanation and also appeared before the Inquiry Committee in May 1978. After the Inquiry Committee had reported its findings to the Council of the Law Society, the Council informed the respondent by a letter dated July 20, 1978 that the Council would apply to the Chief Justice for the appointment of a Disciplinary Committee to investigate into the respondent's "failure to report the criminal breach of trust committed by Santhiran when he was a legal assistant in the firm of Braddell Brothers to the Law Society earlier". The letter also stated that the finding of the Inquiry Committee "in respect of the allegation of accepting restitution in consideration of concealing an offence in contravention of section 213 of the Penal Code, the evidence was inconclusive".

Prior to the Council's said letter of July 20, 1978, the respondent had, on June 6, 1978 been brought before a Magistrate's Court on 9 charges under section 212 of the Penal Code. All these 9 charges were based on allegations that the respondent had obtained or attempted to obtain restitu-

tion of monies from Santhiran in consideration of his concealing offences of criminal breach of trust by Santhiran. The respondent was convicted on all 9 charges on November 7, 1978 after a trial which lasted three weeks. He gave immediate notice of appeal against the convictions.

On December 13, 1978, on the application of the Council of the Law Society pursuant to Section 90 of the Legal Profession Act ("the Act") the Chief Justice appointed a Disciplinary Committee consisting of three senior practising advocates and solicitors to hear and investigate the charge against the respondent for the delay in reporting to the Law Society Santhiran's misappropriations of clients' monies (hereinafter referred to as "the delay charge"). By coincidence, on the same day, December 13, 1978, the Inquiry Committee having earlier decided, as empowered by the Act, to act on its own motion wrote to the respondent informing him of its decision to enquire into the respondent's conduct in relation to his said convictions uder Section 213 of the Penal Code (hereinafter referred to as "the convictions charge") and invited him to give his explanation in writing. As there was no response from the respondent, a reminder was sent to him on March 30, 1979. On April 12, 1979 the respondent wrote to the Chairman of the Inquiry Committee requesting a postponement of the inquiry until after the disposal of his appeal to the High Court against his said convictions. The request was not granted and on May 14, 1979 the respondent appeared before the Inquiry Committee.

Having heard the respondent it would appear that the Inquiry Committee did not report its findings, if any, to the Council. It may be inferred that it decided to await the determination of the respondent's appeal to the High Court against his convictions, a course which the respondent himself had requested. On May 4, 1979 the Legal Profession (Amendment) Act, 1979 was published in the Government Gazette. It repealed Section 95 which vested the power to appoint an Inquiry Committee consisting of five members in the Council and substituted a new Section 85 which vested the power to appoint a Committee known as the Inquiry Committee consisting of not less than five nor more than nine advocates and solicitors in the Chief Justice. The amending Act came into force on October 15, 1979 and in exercise of the power vested in him the Chief Justice appointed nine advocates and solicitors as the members of the new Inquiry Committee. Consequently, the Inquiry Committee which was inquiring into the convictions matter was *functus officio* and had no power to continue with the inquiry.

The respondent's appeal against his convictions was heard by the High Court on February 25 & 26, 1980 and on March 12, 1980 the High Court affirmed the convictions in respect of eight of the nine charges. On March 19, 1980 the Secretary of the Law Society laid a complaint against the respondent to the new Inquiry Committee arising out of his criminal convictions and on September 27, 1980 gave notice to the respondent inviting him to give a written explanation and asking whether he wished to be heard.

By a letter dated October 27, 1980 from his solicitors, the respondent offered his explanation to the complaint arising out of his convictions and stated that he wished to be heard by the new Inquiry Committee. Paragraph 3 of that letter also stated that:–

> "We should mention that our client will shortly be filing a motion before the Court of Appeal for a review of and/or appeal from Mr. Justice Choor Singh's decision in Criminal Motion No. 9 of 1980, which bears on his Appeal Judgment. There is every likelihood that the review/appeal proceedings will eventually reach the Judicial Committee of the Privy Council"

In response to the respondent's desire to be heard he was informed by the new Inquiry Committee by letter dated November 7, 1980 that the Committee would sit to hear the complaint on November 19, 1980 and to attend the hearing. Coincidentally, that date was the date when the Disciplinary Committee investigating into the delay charge gave its findings and determination. We do not have before us any note of the proceedings before the Inquiry Committee on November 19, 1980 but it is a fair inference that the respondent appeared in person or by his solicitors and was heard at the inquiry.

On November 22, 1980 the new Inquiry Committee reported to the Council of the Law Society (as it is required to do by section 87(1)) its findings. It is to be observed that three days earlier, on November 19, 1980 the Disciplinary Committee on the delay charge had made its finding that cause of sufficient gravity for disciplinary action exists for the respondent to show cause why he should not be struck off the roll or suspended or censured. The Council after considering the report of the Inquiry Committee (as it is required to do by Sec-

tion 88(1)) decided that there should be a formal investigation by a Disciplinary Committee on the convictions charge and pursuant to section 90 applied to the Chief Justice on January 2, 1981 to appoint a Disciplinary Committee to hear and investigate into the matter. Section 90 imposes a mandatory obligation on the Disciplinary Committee so appointed to hear and investigate the matter. On January 2, 1981 the respondent was duly informed of the Council's application to the Chief Justice. On January 6, 1981 the Chief Justice appointed a Disciplinary Committee to hear and investigate the convictions charge against the respondent.

On January 12, 1981 the Court of Criminal Appeal refused the respondent's application for leave to appeal against his convictions. Three days later, on January 15, 1981, the respondent's solicitors wrote to the President of the Law Society as follows:—

"Dear Sir,

re: 1st Disciplinary Proceedings against Mr. H.L. Wee

We act on behalf of Mr. H.L. Wee, and we request that you put before the Council of the Law Society the following request by our client.

Your Council has determined that a Disciplinary Committee be appointed to investigate into the complaint on the convictions in respect of the various charges brought against our client under section 213 of the Penal Code. We have now received the Findings of an earlier Disciplinary Committee comprising Messrs. C.C. Tan, Eric Choa and John Poh requiring our client to show cause in respect of the charge of delay in reporting to the Law Society Mr. S. Santhiran's criminal breaches of trust, the subject of our client's convictions under section 213 of the Penal Code. As your Council is aware, both matters arose from the same set of facts.

In the meantime, Mr. Wee is appealing to the Judicial Committee of the Privy Council against the recent decision of the Court of Criminal Appeal on various points of law arising out of the convictions under Section 213 of the Penal Code.

If the Disciplinary Committee now being formed to investigate into the charge relating to the said convictions should return an adverse finding, our client will have to face yet another show cause hearing before the High Court. Such a hearing is unlikely to come on before the High Court before the second half of this year at the earliest.

We respectfully submit that it is not only unfair but also prejudicial to our client to have to contend with two separate show cause hearings on separate dates and in relation to matters that are directly connected, and arising out of one set of facts. If such a situation should arise in a criminal case, it is very likely that the Court will view the separate hearings as an abuse of process, as they subject the accused to double jeopardy for obvious reasons. The delay in making the report was one of the basis on which the convictions are founded.

Our client requests that your Council give the matter their consideration, with a view to deferring the show cause hearing on the delay charge until the findings of the Disciplinary Committee investigating into the convictions charge are returned. In this way, if the findings should also result in a show cause hearing, then both hearings can be dealt with by the High Court at the same time. We invite your Council to consider obtaining the views of the Law Society in England on the matter if they should feel that such a course is appropriate.

Meanwhile, we would appreciate an early reply as to the Council's intentions, in order that the views and/or intentions of the Council may be disclosed to the High Court at the show cause proceedings on delay, in the event these proceedings are not deferred.

Yours faithfully,
Sgd."

The request was refused in a letter dated January 21, 1981 which reads:—

"Dear Sir,

Re: 1st Disciplinary Proceedings against H.L. Wee

I refer to your letter of the 15th January addressed to the President of the Law Society of Singapore and copied to my firm.

I am instructed to say that under the Legal Profession Act, the Council of the Law Society is obliged to proceed with an application requiring the solicitor concerned to show cause, on receipt of the findings of the Disciplinary Committee. The Council cannot see any reason in this case for deferring an application to court requiring your client to show cause until the Disciplinary Committee investigating the conviction has issued its report.

Yours faithfully,
Sgd. J. Grimberg"

On January 31, 1981 the Law Society applied by way of Originating Summons No. 55 of 1981 to the High Court for an order that the respondent do show cause why he should not be dealt with under section 84 of the Legal Profession Act in relation to the delay charge. On February 13, 1981 a show cause order was made by the High Court. On March 16, 1981 the Supreme Court comprising of three judges heard the show cause matter and on August 27, 1981 delivered judgment suspending the respondent from practice for two years. The respondent appealed to the Judicial Committee of the Privy Council which dismissed the appeal on July 13, 1982.

The respondent's application for special leave to appeal against his convictions was refused by the Judicial Committee of the Privy Council on May 20, 1981. On August 26, 1981 the Disciplinary Committee made its report on the convictions charge which contained its finding "that cause of sufficient gravity for disciplinary action exists under Section 84 of the Legal Profession Act."

In August 1982 the Law Society made an application to the High Court for an order that the respondent show cause on the convictions charge why he should not be dealt with under Section 84 of the Act and a show cause order was made on September 17, 1982. The respondent now appears in answer to the show cause order on the convictions charge.

We have set out at some length the material facts because of the respondent's submission that he is entitled to have the show cause order discharged on the grounds:– (1) of *autrefois convict;* or (2) of a doctrine of estoppel, namely issue estoppel or *res judicata* in its wider sense and (3) of the court's inherent jurisdiction to stay proceedings on the ground that they are oppressive and an abuse of its process. We now consider these grounds separately.

(1) *Autrefois convict*

It is a well established principle of the common law that a man cannot be tried for a crime in respect of which he has previously been acquitted or convicted. In *Connelly* v. *Director of Public Prosecutions*[1] Lord Morris said at pages 1307-8:–

"The principle seems clearly to have been recognised that if someone had been either convicted or acquitted of an offence he could not later be charged with the same offence or with what was in effect the same offence. In determining whether or not he was being so charged the court was not confined to an examination of the record. The reality of the matter was to be ascertained. That, however, did not mean that if two separate offences were committed at the same time a conviction or an acquittal in respect of one would be any bar to a subsequent prosecution in respect of the other. It was the offence or offences that had to be considered. Was there in substance one offence – or had someone committed two or more offences?"

Later on at pages 1309-1310 Lord Morris said:–

"It matters not that incidents and occasions being examined on the trial of the second indictment are precisely the same as those which were examined on the trial of the first. The court is concerned with charges of offences or crimes. The test is, therefore, whether such proof as is necessary to convict of the second offence would establish guilt of the first offence or of an offence for which on the first charge there could be a conviction ... That the facts in the two trials have much in common is not a true test of the availability of the plea of autrefois acquit. Nor is it of itself relevant that two separate crimes were committed at the same time so that in recounting the one there may be mention of the other."

Lord Devlin at page 1339 *et seq.* dealt with the doctrine of *autrefois* in these words:–

"My Lords, in my opinion, Stephenson and Nield JJ. were right in directing the jury to reject the plea of autrefois acquit. I have had the advantage of reading the speech of my noble and learned friend, Lord Morris of Borth-y-Gest, and he has dealt so fully with this point that I need state only briefly my conclusion on it. For the doctrine of autrefois to apply, it is necessary that the accused should have been put in peril of conviction for the same offence as that with which he is then charged. The word 'offence' embraces both the facts which constitute the crime and the legal characteristics which make it an offence. For the doctrine to apply it must be the same offence both in fact and in law. Robbery is not in law the same offence as murder (or as manslaughter, of which the accused could also have been convicted on the first indictment) and so the doctrine does not apply in the present case.

I would add one further comment. My noble and learned friend in his statement of the law, accepting what is suggested in some dicta in the authorities, extends the doctrine to cover offences which are in effect the same or substantially the same. I entirely agree with my noble and learned friend that these dicta refer to the legal characteristic of an offence and not to the facts on which it is based: see *Rex* v. *Kendrick and Smith* (144 L.T. 748). I have no difficulty about the idea that one set of facts may be substantially but not exactly the same as another. I have more difficulty with the idea that an offence may be substantially the same as another in its legal characteristics; legal characteristics are precise things and are either the same or not. If I had felt that the doctrine of autrefois was the only form of relief available to an accused who has been prosecuted on substantially the same facts, I should be tempted to stretch the doctrine as far as it would go. But, as that is not my view, I am inclined to favour keeping it within limits that are precise."

In the present case, on the assumption that the doctrine of *autrefois* is available in disciplinary proceedings against an advocate and solicitor the respondent's plea of *autrefois* convict must fail. In the first disciplinary proceedings the complaint was that the respondent had delayed for 13 months in reporting to the Law Society the conduct of a legal assistant employed by him who had confessed to him that he had misappropriated clients' monies in the Clients' Account of the respondent's firm in circumstances amounting to grossly improper conduct in the discharge of his professional duty (see section 84(2)(b) of the Legal Profession Act). In the present disciplinary proceedings the com-

plaint is that the respondent has been convicted of criminal offences implying a defect of character which makes him unfit for his profession (see section 84(1) and (2)(a) of the Legal Profession Act).

It is clear that one essential ingredient which is necessary to prove in the present disciplinary proceedings is the respondent's conviction of one or more criminal offences. This ingredient is unnecessary to support a complaint in the first disciplinary proceedings and it follows that the respondent has not been put to peril of disciplinary punishment for the same complaint or "offence" as that which he is charged. The legal characteristics, to use Lord Devlin's expression, are not the same in the case of the first disciplinary proceedings as in the present one and, to use Lord Morris' expression, the "offence" alleged in the first disciplinary proceedings is not substantially the same as in the present one.

(2) *Issue Estoppel or Res judicata in its wider sense*

The principle relied on is that it is an abuse of process to raise in subsequent proceedings matters which could and should have been raised in the earlier proceedings. In *Yat Tung Investment Co. Ltd.* v. *Dao Hung Bank Ltd. & Anor.*.[2] Lord Kilbrandon who delivered the judgment of the Judicial Committee of the Privy Council at page 590 said of the doctrine of estoppel namely, *res judicata*:–

"But there is a wider sense in which the doctrine may be appealed to, so that it becomes an abuse of process to raise in subsequent proceedings matters which could and therefore should have been litigated in earlier proceedings. The locus classicus of that aspect of res judicata is the judgment of Wigram V.C. in *Henderson* v. *Henderson* (1843) 3 Hare 100, 115, where the judge says:–

'... where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisidiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.'

The shutting out of a 'subject of litigation' – a power which no court should exercise but after a scrupulous examination of all the circumstances – is limited to cases where reasonable diligence would have caused a matter to be earlier raised; moreover, although negligence, inadvertence or even accident will not suffice to excuse, nevertheless 'special circumstances' are reserved in case justice should be found to require the non-application of the rule."

In our opinion, on the facts before us, the plea of issue estoppel or *res judicata* in its wider sense, even if this plea is available in the present disciplinary proceedings, has not been successfully made out by the respondent. It is true that the first Inquiry Committee inquiring into the convictions charge, after hearing the respondent, did not report its finding, if any, to the Council. But it is to be observed that the respondent himself was keen and indeed anxious to delay the completion of the inquiry until all legal avenues open to him in respect of his criminal convictions had been exhausted. The respondent's appeal to the High Court was not disposed of until after that Inquiry Committee had become *functus officio*. When the new Inquiry Committee constituted under the amended Section 87 of the Act commenced its inquiry into the convictions charge, the respondent again indicated that he intended to challenge the decision of the High Court dismissing his appeal. By the time the new Inquiry Committee reported its finding to the Council, the Disciplinary Committee investigating into the delay charge had made its report. Thereafter, the respondent made no application to the Law Society or to the High Court to adjourn the hearing of the show cause order in respect of the delay charge until the Disciplinary Committee appointed by the Chief Justice to investigate into the convictions charge had completed its investigation and made its report.

(3) *The Court's inherent jurisdiction to stay the present proceedings on the ground that they are oppressive and an abuse of its process*

It is submitted that this court has a right in its discretion to decline to hear the present proceedings on the ground that they are oppressive and an abuse of the process of the Court and in support the House of Lords' cases of *Connelly* v. *Director of Public Prosecutions (supra)* and *Director of Public Prosecution* v. *Humphrys*[3] are relied on. In *Humphrys' case*, Lord Salmon said at page 45:

"... I entirely agree with everything said by my noble and learned friends, Lord Devlin and Lord Pearce in *Connelly* v. *Director of Public Prosecutions* affirming that it is an important part of the court's duty to protect their process from abuse and those who are brought before them from oppression".

It is the respondent's submission that he has suffered oppression and real injustice because:

(a) the Law Society could and should have brought the convictions charge to be heard by the Disciplinary Committee investigating into the delay charge;

(b) the Law Society could and should have made sure that both show cause orders be heard together by the Court.

(c) as both charges are founded on substantially the same facts and should generally be tried together, *prima facie*, the failure to try them together amounts to oppression and injustice to the respondents;

(d) the convictions charge could have been heard in September 1980 and thus disposed of finally by the Court's judgment in August 1981, instead of which the respondent had the convictions charge outstanding till now, and if a separate penalty was imposed, it would have been imposed in August 1981; and

(e) the respondent has to incur additional costs in meeting these two proceedings when only one set of costs is necessary.

In our opinion, it is unnecessary in the present case to decide whether or not the Court in disciplinary proceedings under the Act has an inherent jurisdiction to stay the proceedings on the ground that they are oppressive and an abuse of its process. If there is such a power it is in our opinion a power that should be exercised only in the most exceptional cases and the circumstances of this case does not warrant the exercise of our discretion. On all the facts and circumstances we are not persuaded that a case has been made out by the respondent that the present disciplinary proceedings amount to an abuse of the process of the court or to injustice and oppression to the respondent.

With regard to submission (a) it is clear on the facts that the convictions charge could not have been heard by the Disciplinary Committee investigating into the delay charge. That Disciplinary Committee had completed its investigation before the Inquiry Committee investigating into the convictions charge had heard the complainant.

With regard to submission (b), it was incumbent on the Law Society to proceed to make an application for a show cause order (see sections 94(1) and 98(1)). In any event, it is plain on the facts, which show that the respondent was determined to exhaust all possible avenues in relation to these criminal convictions, that it would be against the interests of the public for the Law Society to withhold applying to the High Court for a show cause order on the delay charge until the Disciplinary Committee which had only recently been appointed had heard the convictions charge and had reported its findings.

With regard to submission (c) the delay charge and the convictions charge although both arise from substantially the same facts have different legal characteristics and the failure to hear together the two show cause orders, one made on January 13, 1981 and the other on September 17, 1982, does not, in our opinion, amount to oppression and injustice to the respondent.

With regard to submission (d) it is evident from the facts that the convictions charge could not have been heard in September 1980, and with regard to submission (e) the question of costs is a matter entirely in the discretion of the court.

The next main submission is that the respondent's convictions under section 213 of the Penal Code could not be said to imply a defect of character, which makes him unfit for his profession within the meaning of section 84(2)(a) of the Act. Section 213 of the Penal Code reads:—

"Whoever accepts, or agrees to accept, or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the offence is punishable with imprisonment for life, or with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both."

It is to be observed that it was the respondent who offered to conceal the criminal misappropriations from the Police if Santhiran made full restitution to his firm. In our judgment, on the facts and having regard to all the circumstances and the nature of the offence, the respondent's convictions clearly imply a defect of character which makes him unfit for his profession. The fact that in England the equivalent of our section 213 of the Penal Code, has now been abolished by statute is

not, in our opinion, a relevant consideration. Another argument advanced on behalf of the respondent is that, according to Choor Singh J. no dishonesty on the part of the respondent was involved. In our opinion, dishonesty is not the only defect of character which makes an advocate and solicitor unfit for his profession. Whether or not an advocate and solicitor's conviction of a criminal offence implies a defect of character which makes him unfit for his profession depends on the facts and circumstances of that particular case and the nature of that criminal offence. For these reasons we reject this submission.

We come now to the question of sentence. It is submitted on behalf of the respondent that his misconduct is substantially the same as his misconduct on the delay charge for which he has been punished by two years' suspension from practice and it would not be right to inflict an additional punishment. In addition, it is urged on his behalf that, having regard to his impeccable record, the anxiety, the publicity and the humiliation of criminal proceedings and the anxiety, publicity, humiliation and punishment in respect of the delay charge proceedings, he has been adequately punished for his transgressions arising out of Santhiran's criminal misappropriation and has paid his debt to society and the profession.

In our judgment, it would not be in the public interest or in the interest of the profession, on all the facts and the circumstances of the present case that no penalty is imposed. However, taking into consideration all the factors advanced on the respondent's behalf, we order that the respondent be suspended from practice for a period of two years and that he pay the costs of the present proceedings.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

CHIANG HONG PTE. LTD. v. LIM POH NEO t/a TAI SAN PLASTIC FACTORY

[C.A. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.) March 6, 1984]
[Singapore – Civil Appeal No. 108 of 1981]

Landlord & Tenant – Claim for possession against respondent – Compensation Agreement between parties – Appellants agreed to pay $20,000/- for vacant possession – Destruction of premises by fire – Whether Compensation Agreement frustrated in law

Contract – Compensation Agreement between landlord and tenant – Destruction of premises by fire – Whether Compensation Agreement was frustrated in law.

The respondent was a tenant or licensee of a piece of land and a structure erected at No. 40-A Tannery Lane. The appellants subsequently became the owners of the said land (the premises). In 1977 the appellants commenced legal proceedings against the respondent to recover possession of the premises on the ground that the respondent was a mere licensee and alternatively on the ground that even if the respondent was a tenant, she was not entitled to the protection of the Control of Rent Act (Cap. 266). The respondent defended the action which was compromised after negotiations by an agreement dated September 13, 1979 (the Compensation Agreement).

Under the Compensation Agreement the respondent agreed to vacate and deliver up vacant possession of the premises to the appellants on or before June 30, 1980, in consideration of which the appellants agreed to pay $200,000/- less certain arrears of and future licence fees. Under clause 2 of the Compensation Agreement, the appellants agreed to pay a sum of $20,000/- to the respondent on signing of the agreement and the balance of the compensation on delivery of vacant possession of the said premises.

On January 5, 1980, before the respondent could leave the premises, a fire which started from a neighbouring site, completely destroyed the structure. Despite demands, the appellants refused to pay the balance. The respondent forfeited the sum of $20,000/- paid and claimed for the full sum of $167,142/- under the Compensation Agreement.

The appellants refused to pay on the ground that the Compensation Agreement was frustrated in law. The appellants appealed from an order of the High Court whereby judgment was given for the respondent against the appellants for the sum of $155,142/- with interest and costs and the appellants' claim against the respondent in Suit No. 541 of 1980 was dismissed.

Held, dismissing the appeal: (1) the destruction of the structure was not due to the fault of either party. The parties, when framing the Compensation Agreement, had not present in their minds the possibility of such a disaster and had made no express stipulation with reference to it;

(2) the learned trial judge rightly paid attention to the contents of the negotiations leading to the making of the Compensation Agreement;

(3) the doctrine of frustration does not apply in this case and the appeal should be dismissed.